Bill Draft 2009-SVxz-17A:
Modernize Adm. Tax/Restore Amen. Exclusion.

2009-2010 General Assembly

Committee:	Revenue Laws Study Committee	**Date:**	May 4, 2010
Introduced by:		**Prepared by:**	Trina Griffin Committee Counsel
Analysis of:	2009-SVxz-17A		

SUMMARY: This proposal does three things:

- ***It restores the Department of Revenue's pre-2009 interpretation of the admissions tax statute to exclude from tax charges for amenities that are bundled with a ticket purchase. This provision would become effective for charges for admission received on or after August 1, 2010.***
- ***It extends the admissions tax to the Internet resale of tickets by a person engaged in the business of reselling. The tax would apply to the difference between the face value of the ticket and the price for which the reseller sells the ticket. This provision would become effective January 1, 2011, and apply to admission tickets sold on or after that date.***
- ***It requires the Department of Revenue to provide ample notice to taxpayers when it issues an interpretation that revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due. This provision would be effective when it becomes law.***

CURRENT LAW & BILL ANALYSIS:

ADMISSIONS TAX

North Carolina imposes a 3% privilege tax on the gross receipts of a person who offers or manages any of the following taxable amusements:

- A dance or athletic contest for which admission fee in excess of 50¢ is charged.
- Amusement or entertainment for which an admission is charged.
- A performance, show, or exhibition, such as a circus or dog show.

RESTORE AMENITIES EXCLUSION

CURRENT LAW: Entertainment venues frequently offer its patrons certain amenities in conjunction with the sale of admission tickets to performances of live entertainment. Those amenities may include parking privileges, preferential or more luxurious seating, access to special concession stands, access to luxury viewing suites, and access to concierge staff. In some cases, the venue will separately state the "seat price" on the face of a ticket with charges over and above that price reflecting the cost of the amenities. In other cases, a purchaser may buy a package or contract for the lease of a suite where the price includes a seat for an event as well as amenities, but the charges are not separately stated.

The admissions tax statute does not specifically address how these amenities are to be taxed. In 1994, a taxpayer requested a written opinion from the Department of Revenue as to whether the admissions tax applied to amenities, and the Department responded that amenities were excludable from the tax. This interpretation was in place for over 15 years, and in that time, the statute did not change in any substantive way. However, on January 30, 2009, the Department issued a directive, effective the following day, stating that amenities are subject to the admissions tax. Specifically, the directive reads:

> *"Gross receipts are taxes computed on the admission price of the amusement. An admission price is the price paid to enter an event. Effective for tickets for admission sold on or after February 1, 2009, the gross receipts tax is due on the price paid by the*

customer for admission into an event regardless of whether that price just covers the seat price or also includes amenities."

BILL ANALYSIS: The Revenue Laws Study Committee reviewed this matter because it is a matter of tax policy on which the statute is silent, and because the Department has issued two opposite interpretations despite the fact that the statute has remained the same.

Section 1 of the proposal would restore the Department's pre-2009 interpretation of the admissions tax statute by excluding amenities from the tax. If the charges for the amenities are not separately stated on the face of the ticket, then the charge for admission would be equal to the charge for a ticket to the same event that does not include amenities and that is for a seat located directly in front of or closest to a seat that includes amenities.

EFFECTIVE DATE: This provision would become effective for charges for admission received on or after August 1, 2010.

EXTEND ADMISSIONS TAX TO INTERNET TICKET RESALES

CURRENT LAW:

Ticket scalping – G.S. 14-344 limits the total amount a seller or reseller of an admission ticket may charge to "…the combined face value of the ticket, tax and the authorized service fee." The service fee may not exceed $3.00 unless the promoter of the event and the ticket sales agency agree in writing to a different amount and that amount is made known to the public in writing. A violation of this section is punishable as a Class 2 misdemeanor.

Internet ticket resales – In 2008, as part of Senate Bill 1407, the General Assembly enacted G.S. 14-344.1. This statute authorizes a person to resell an admission ticket on the Internet with no cap on price unless the resale is prohibited by the venue. A person who resells an admission ticket under this statute is required to provide a ticket guarantee that must be conspicuously displayed on the person's Website and to direct a prospective purchaser to the ticket guarantee before completion of the resale transaction. The guarantee must provide that a purchaser will be given a full refund if any of the following occurs:

- The event is cancelled.
- The purchaser is denied admission other than due to an act or omission by the purchaser.
- The ticket is not delivered as promised resulting in purchaser’s inability to attend event.

Ticket resales are not subject to the admissions tax because the secondary seller is not “giving, offering, managing, or exhibiting” the amusement. The reseller does not fall within the scope of the statute.

Reporting requirement – Internet ticket resellers must report their gross receipts for North Carolina events to the Department of Revenue on monthly basis. Since August 2008, there have been 65 reports, reflecting 17 reporting entities.

BILL ANALYSIS: This proposal would do the following:

- Extend the 3% admissions tax to the gross receipts of a person who is engaged in the business of reselling tickets under G.S. 14-344.1. The gross receipts would exclude the price printed on the face of the ticket. Thus, the tax would be imposed on the difference between the price sold and the face value of the ticket. If the price is not printed on the ticket, the tax would apply to the difference between the amount the reseller paid for the ticket and the amount the reseller charges for the ticket. This same tax provision passed the Senate when Senate Bill 1407 was being considered during the 2008 Regular Session, but it was removed when the bill was considered in the House Finance

Committee. This provision would modernize the admissions tax by recognizing the current business model for the sale and resale of tickets, which did not exist at the time the admissions tax was originally enacted in the 1930s. It would also equalize the admissions tax by treating the markup in a resale transaction the same as the face value price in the first sale.

- Prohibit cities or counties from imposing a privilege license tax on Internet ticket resellers.
- Repeal the reporting requirement. The reporting requirement was added to Senate Bill 1407 when the tax provision was removed. The act originally included a sunset, which required the General Assembly to revisit the legislation. At the time, the rationale for the reporting requirement was to provide the General Assembly with data for when it reconsidered the legislation. By taxing these transactions, there is no need for a reporting requirement.
- Provide for the repeal of G.S. 14-344.1 if a court finds that the privilege tax violates the Internet Tax Freedom Act (ITFA) or is otherwise invalid. ITFA temporarily prohibits states from imposing multiple or discriminatory taxes on electronic commerce. A discriminatory tax is one that is not generally imposed and legally collectible on transactions involving similar property, goods, services or information accomplished through other means. Arguments have been raised as to whether this legislation might violate ITFA because it taxes only those ticket resales that occur on the Internet. However, face-to-face ticket resales for greater than face value are generally illegal in North Carolina. As such, an argument can be made that Internet ticket resales are, in fact, given preferential treatment to the extent they are authorized, with no cap, whereas face-to-face ticket resales are essentially prohibited. A similar transaction cannot be conducted by a means other than the Internet. However, since the issue has been raised, the proposal provides that if a court finds that the privilege tax violates ITFA, then the authority to resell tickets on the Internet is repealed.

EFFECTIVE DATE: This provision would become effective January 1, 2011, and would apply to admission tickets sold on or after that date.

REQUIRE AMPLE NOTICE OF REVISED INTERPRETATIONS

CURRENT LAW: G.S. 105-264 provides that it is the duty of the Secretary of Revenue to interpret all laws administered by the Department. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes an interpretation, a taxpayer who relied on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the interpretation was changed and was not paid by reason of reliance upon the interpretation.

The Secretary is permitted to change an interpretation, and that change may apply on and after the effective date of the change, but there is no statutory requirement that the Department provide a certain amount of notice to taxpayers prior to applying a revised interpretation.

BILL ANALYSIS: Section 4 of the proposal would require the Department to provide a certain amount of notice to taxpayers if it revises a prior interpretation by expanding the scope of a tax or otherwise increasing the amount of tax due. Under the proposal, a revised interpretation would not become effective until the sooner of the following:

- For a tax that is payable on a monthly or quarterly basis, the first day of a month that is at least 90 days after the date the revised interpretation is issued.
- For a tax that is payable on an annual basis, the first day of a tax year that begins after the date the revised interpretation is issued.

EFFECTIVE DATE: This provision would become effective when the act becomes law.

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